(23)

IN THE HIGH COURT OF JUDICATURE : BILASPUR

D.B : HON'BLE SHRI S.R. NAYAK, CJ. &
HON'BLE SHRI SATISH K. AGNIHOTRI, J.

Misc. Appeal No. 98 OF 2005

APPELLANT : The National Insurance Co. Ltd.,
Divisional Office, Mobin Mahal,
G.E. Road, Raipur
Through : Assistant Manager
Branch Bilaspur, Bilaspur
(C.G.)

Versus

RESPONDENTS

1. Smt. Prabha Dhankar
Aged 22 years,
Wd/o Rameshwar Dhankar

2. Bholasingh, aged 53 yrs.
S/o Natthuram

3. Kumari Chitrarekha
Aged 18 yrs, D/o Bholasingh

(All above three resident of Shankarpur Ward No. 7, Rajnandgaon, District – Rajnandgaon.)

4. Nandkumar
S/o Rajaram, Aged 45 yrs.
(Truck Driver) R/o Arang,
P.S. Arang, District – Raipur (C.G.)

5. Narsingh Agrawal,
S/o N.L. Agrawal (Truck Owner)
R/o Mandir Hasaud ,
P.S. Mandir Hasaud, District –
Raipur (C.G.)

Present : Mr. Shree Kumar Agrawal, Sr. Advocate with Mr. A.K. Gupta, learned counsel for the appellant.

---

(24)

ORAL ORDER
(Passed on 5th December 2005)

In this appeal preferred by the Insurance Company, It is the contention of the learned standing counsel for the Insurance Company that since the driver of the Motor Vehicle involved in the accident and insured by the appellant Insurance Company, on the date of the accident, did not have effective and valid driving license and therefore, the liability to pay compensation should not have been fastened in terms of the Company. This contention does not merit our acceptance. Although the above contention was raised in the statement of objection filed by the Insurance Company to the claim petition, the Insurance Company has not adduced any evidence to support that plea. It is well settled position in law that if an Insurance Company seeks to avoid liability of paying compensation on the ground that the driver of the motor vehicle involved in the accident did not have valid and effective license to drive the motor vehicle involved in the accident, then, it is its burden to prove that fact by adducing legal evidence. Since in the instant case, the Insurance Company has failed to establish that fact by adducing legal evidence, it cannot avoid liability of paying compensation. The appeal is meritless and it is accordingly dismissed. There is no order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Sd/-
Chief Justice

Rajesh